

ASSEMBLY BILL

No. 1723

Introduced by Assembly Member Dodd

January 28, 2016

An act to amend Section 1788.18 of the Civil Code, relating to debt collection.

LEGISLATIVE COUNSEL'S DIGEST

AB 1723, as introduced, Dodd. Debt collection.

Existing law requires a debt collector that receives a copy of a police report filed by the debtor alleging that the debtor is the victim of an identity theft crime and a written statement in which the debtor claims to be the victim of identity theft to cease collection activities until completion of a review. Existing law requires the debt collector to review and consider all of the information provided by the debtor and other available information and authorizes the debt collector to recommence debt collection activities only upon making a good faith determination that the information does not establish that the debtor is not responsible for the specific debt in question.

This bill would require the debt collector, upon receipt of the police report and written statement described above, if it furnished adverse information about the debtor to a consumer credit reporting agency, to notify the consumer credit reporting agency that the account is disputed as subject to identity theft or fraud, and initiate a review, as specified, within 10 business days. The bill would require the debt collector to send notice of its determination to the debtor no later than 10 business days after concluding the review. The bill would require a debt collector that does not recommence collection activities under these provisions to notify the creditor, no later than 10 business days after making its

determination, and if it furnished adverse information to a consumer credit reporting agency, to notify the agency to delete that information no later than 10 business days after making its determination. The bill would also prohibit a creditor from pursuing further collections on the debt or selling debt to a debt collector, if the creditor has received notice that debt collector has terminated debt collection activities, as described above.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 1788.18 of the Civil Code is amended
2 to read:
3 1788.18. (a) Upon receipt from a debtor of all of the following,
4 a debt collector shall cease collection activities until completion
5 of the review provided in subdivision (d):
6 (1) A copy of a police report filed by the debtor alleging that
7 the debtor is the victim of an identity theft crime, including, but
8 not limited to, a violation of Section 530.5 of the Penal Code, for
9 the specific debt being collected by the debt collector.
10 (2) The debtor's written statement that the debtor claims to be
11 the victim of identity theft with respect to the specific debt being
12 collected by the debt collector.
13 (b) The written statement described in paragraph (2) of
14 subdivision (a) shall consist of any of the following:
15 (1) A Federal Trade Commission's Affidavit of Identity Theft.
16 (2) A written statement that contains the content of the Identity
17 Theft Victim's Fraudulent Account Information Request offered
18 to the public by the California Office of Privacy Protection.
19 (3) A written statement that certifies that the representations are
20 true, correct, and contain no material omissions of fact to the best
21 knowledge and belief of the person submitting the certification.
22 A person submitting the certification who declares as true any
23 material matter pursuant to this subdivision that he or she knows
24 to be false is guilty of a misdemeanor. The statement shall contain
25 or be accompanied by the following, to the extent that an item
26 listed below is relevant to the debtor's allegation of identity theft
27 with respect to the debt in question:
28 (A) A statement that the debtor is a victim of identity theft.

1 (B) A copy of the debtor's driver's license or identification card,
2 as issued by the state.

3 (C) Any other identification document that supports the
4 statement of identity theft.

5 (D) Specific facts supporting the claim of identity theft, if
6 available.

7 (E) Any explanation showing that the debtor did not incur the
8 debt.

9 (F) Any available correspondence disputing the debt after
10 transaction information has been provided to the debtor.

11 (G) Documentation of the residence of the debtor at the time of
12 the alleged debt. This may include copies of bills and statements,
13 such as utility bills, tax statements, or other statements from
14 businesses sent to the debtor, showing that the debtor lived at
15 another residence at the time the debt was incurred.

16 (H) A telephone number for contacting the debtor concerning
17 any additional information or questions, or direction that further
18 communications to the debtor be in writing only, with the mailing
19 address specified in the statement.

20 (I) To the extent the debtor has information concerning who
21 may have incurred the debt, the identification of any person whom
22 the debtor believes is responsible.

23 (J) An express statement that the debtor did not authorize the
24 use of the debtor's name or personal information for incurring the
25 debt.

26 (K) The certification required pursuant to this paragraph shall
27 be sufficient if it is in substantially the following form:

28
29 "I certify the representations made are true, correct, and
30 contain no material omissions of fact.

31 _____
32 (Date and Place)

31 _____
32 (Signature)

33
34 (c) If a debtor notifies a debt collector orally that he or she is a
35 victim of identity theft, the debt collector shall notify the debtor,
36 orally or in writing, that the debtor's claim must be in writing. If
37 a debtor notifies a debt collector in writing that he or she is a victim
38 of identity theft, but omits information required pursuant to
39 subdivision (a) or, if applicable, the certification required pursuant
40 to paragraph (3) of subdivision (b), if the debt collector does not

1 cease collection activities, the debt collector shall provide written
2 notice to the debtor of the additional information that is required,
3 or the certification required pursuant to paragraph (3) of
4 subdivision (b), as applicable, or send the debtor a copy of the
5 Federal Trade Commission's Affidavit of Identity Theft form.

6 ~~(d) Upon receipt of~~ *Within 10 business days of receiving the*
7 *complete statement and information described in subdivision (a),*
8 ~~the debt collector shall review and consider~~ *shall, if it furnished*
9 *adverse information about the debtor to a consumer credit*
10 *reporting agency, notify the consumer credit reporting agency that*
11 *the account is disputed as subject to identity theft or fraud, and*
12 *initiate a review considering all of the information provided by*
13 *the debtor and other information available to the debt collector in*
14 *its file or from the creditor. The debt collector shall send notice*
15 *of its determination to the debtor no later than 10 business days*
16 *after concluding the review.* The debt collector may recommence
17 debt collection activities only upon making a good faith
18 determination that the information does not establish that the debtor
19 is not responsible for the specific debt in question. The debt
20 collector's determination shall be made in a manner consistent
21 with the provisions of subsection (1) of Section 1692 of Title 15
22 of the United States Code, as incorporated by Section 1788.17 of
23 this code. The debt collector shall notify the debtor in writing of
24 that determination and the basis for that determination before
25 proceeding with any further collection activities. The debt
26 collector's determination shall be based on all of the information
27 provided by the debtor and other information available to the debt
28 collector in its file or from the creditor.

29 (e) No inference or presumption that the debt is valid or invalid,
30 or that the debtor is liable or not liable for the debt, shall arise if
31 the debt collector decides after the review described in subdivision
32 (d) to cease or recommence the debt collection activities. The
33 exercise or nonexercise of rights under this section is not a waiver
34 of any other right or defense of the debtor or debt collector.

35 (f) The statement and supporting documents that comply with
36 subdivision (a) may also satisfy, to the extent those documents
37 meet the requirements of, the notice requirement of paragraph (5)
38 of subdivision (c) of Section 1798.93.

1 (g) A debt collector who ceases collection activities under this
2 section and does not recommence those collection activities shall
3 do all of the following:

4 (1) If the debt collector has furnished adverse information to a
5 consumer credit reporting agency, notify the agency to delete that
6 ~~information.~~ *information no later than 10 business days after*
7 *making its determination.*

8 (2) Notify the creditor *no later than 10 business days after*
9 *making its determination* that debt collection activities have been
10 terminated based upon the debtor's claim of identity theft.

11 (3) *Upon receipt of the notification described in paragraph (2),*
12 *the creditor shall not pursue further collections on, or sell, a*
13 *consumer debt if the consumer is a victim of an identity theft crime,*
14 *including, but not limited to, a violation of Section 530.5 of the*
15 *Penal Code.*

16 (h) A debt collector who has possession of documents that the
17 debtor is entitled to request from a creditor pursuant to Section
18 530.8 of the Penal Code is authorized to provide those documents
19 to the debtor.

20 (i) Notwithstanding subdivision (h) of Section 1788.2, for the
21 purposes of this section, "debtor" means a natural person, firm,
22 association, organization, partnership, business trust, company,
23 corporation, or limited liability company from which a debt
24 collector seeks to collect a debt that is due and owing or alleged
25 to be due and owing from the person or entity. The remedies
26 provided by this title shall apply equally to violations of this
27 section.